violations of substantial economic importance.[3] The disparate holdings of the Ninth Circuit in *Metrophones* and the D.C. Circuit in this case (Pet. 22-25) are a direct result of this Court's failure thus far to resolve the conflict among the circuits. If the conflict is not resolved now, it will inevitably produce still more confusion in future cases.

This Court has held that the term "order" (in Section 402) encompasses rulemaking orders that are "adopted by the Commission in the avowed exercise of its rule-making power" and that "have the force and effect of law." *Columbia Broadcasting System, Inc.* v. *United States*, 316 U.S. 407, 417 (1942). It should resolve confusion in the lower courts by granting certiorari to decide, in this case, whether the term has the same meaning in Section 416, a companion provision to Section 402.

IV. It Is Clear That Petitioners Have Standing To Sue

This case does not present any "thorny" issues of standing, notwithstanding respondents' efforts (Br. in Opp. 27-29) to suggest otherwise. Respondents concede, as the D.C. Circuit unanimously acknowledged, that some of the petitioners are PSPs suing to recover unpaid compensation and that those petitioners have alleged a direct injury in fact sufficient to confer standing. Therefore, there is no question that the Court could reach and resolve the circuit conflicts presented by this case, regardless of whether the subset of petitioners who sued as assignees have standing.

Even as to the standing of assignees, this case involves an unremarkable – and clearly correct – application of established

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[3] These cases also show that concerns about enabling frivolous lawsuits for "every" violation of an FCC regulation (see Pet. App. 19a; *Metrophones*, 423 F.3d at 1071) have no foundation in practical experience or, as we explained in our petition (at 24 n.13) in the language of the statute.

law. *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U.S. 765 (2000), squarely held that "the assignee of a claim has standing to assert the injury in fact suffered by the assignor." *Id.* at 773.

Respondents argued in the court of appeals that *Vermont Agency* does not control here, because the assignee in *Vermont Agency* intended to keep a portion of its recovery under the assigned claims, whereas the assignees here have agreed to pass back to the assignors all damages recovered. But *Vermont Agency* clearly rejected that argument. Standing in that case did not depend on the assignee's "bounty" because the bounty, much like a wager on the outcome of a case, was "an interest that * * * cannot give rise to a cognizable injury in fact for Article III standing purposes." 529 U.S. at 773. The relevant question is whether the *assignor* suffered an injury in fact sufficient to confer standing, not whether the assignee intends to keep some, all, or none of the damages resulting from that injury. *Id.* at 774 ("We conclude, therefore, that *the United States'* injury in fact suffices to confer standing on respondent Stevens.") (emphasis added). In addition, as the district court (Pet. App. 66a-73a) and court of appeals majority (Pet. App. 8a-11a) correctly determined, two older decisions of this Court squarely hold that assignees-for-collection are entitled to assert the assignors' injury, and there is no contrary authority. See *Titus* v. *Wallick*, 306 U.S. 282, 289 (1939); *Spiller* v. *Atchison, Topeka & Santa Fe Ry.*, 253 U.S. 117, 134 (1920). Petitioners' standing cannot be seriously doubted.

V. This Case Should Be Accepted for Plenary Review and Consolidated With *Metrophones*

Because this case presents questions that are intertwined with the questions presented in *Metrophones*, and because the additional questions presented in this case merit review, the Court should grant the petition in this case and consolidate it with *Metrophones*. By doing so, with very little expenditure of

additional resources or effort, the Court will be able to consider all rather than just some major aspects of the problem presented. It will have the opportunity to resolve another significant circuit conflict, to correct the misinterpretation of its decision in *Sandoval*, and to construe the specific statutory provision (Section 276) in which Congress focused on the problem underlying both cases, *i.e.*, the right Congress wished to confer on PSPs to receive compensation for dial-around calls.

If the Court chooses not to grant this petition and consolidate it with *Metrophones*, it should hold this petition for appropriate disposition after it decides *Metrophones*.

CONCLUSION

The petition for a writ of certiorari should be granted and this case should be consolidated with *Metrophones*. If the petition is not granted for plenary review at this time, it should held and disposed of as appropriate in light of the Court's disposition of *Metrophones*.

Respectfully submitted.

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